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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

In re J.C., a Person Coming Under the  
Juvenile Court Law.

2d Juv. No. B208538  
(Super. Ct. No. J1173867)  
(Santa Barbara County)

THE PEOPLE,

Plaintiff and Respondent,

v.

J.C.,

Defendant and Appellant.

J.C. appeals from the judgment following denial of a suppression motion. In a petition filed under Welfare and Institutions Code section 601, subdivision (b), J.C. was charged with carrying a switchblade knife. (Pen. Code, § 653k.)<sup>1</sup> He filed a motion to suppress evidence. (§ 1538.5.) After the motion was denied, J.C. admitted the allegations of the petition. The juvenile court adjudicated him a ward of the court, placed him on probation and set a maximum term of confinement of six months. We conclude the suppression motion was properly denied, and affirm.

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<sup>1</sup> All statutory references are to the Penal Code unless otherwise stated.

## FACTS AND PROCEDURAL HISTORY

At 12:40 p.m. police officer Melvin Parker and his partner, officer Carlton, were on patrol in an area of Santa Maria, California, which had been the sight of numerous gang fights. The officers saw J.C. and another minor walking and asked to speak with them. Officer Carlton recognized the minor with J.C. as a probationer and the officers noticed that one of his eyes was swollen. Officer Carlton conducted a probation search of the other minor while officer Parker spoke to J.C. Parker asked J.C.: "Do you mind if I search you for any weapons?" J.C. replied, "Yeah," turned around, and raised and extended his arms parallel to the ground. Parker asked whether J.C. had any weapons, and J.C. answered that he had a knife in his pocket. Parker searched him, finding and removing the knife, a glass pipe with marijuana residue and tobacco papers. J.C. remained calm and cooperative at all times. The police did not have a warrant for the search.

## DISCUSSION

J.C. contends the trial court erred in denying his motion to suppress the knife and other objects found in his possession because he did not consent to the search. He argues that the verbal response of "yeah" when asked whether he "minded" being searched showed he was objecting to the search. We disagree.

A warrantless search violates the Fourth Amendment unless a valid exception to the warrant requirement can be established. (*Schneckloth v. Bustamonte* (1973) 412 U.S. 218, 219.) Consent to the search is such an exception. (*Ibid.*) The prosecution bears the burden of proving consent was voluntary, and the question whether consent to a search was voluntary or the product of duress or coercion is a question of fact to be determined from the totality of the circumstances. (*Id.* at p. 227; *People v. Zamudio* (2008) 43 Cal.4th 327, 341.)

The voluntariness of the consent is determined in the first instance by the trial court which has the authority to assess credibility of witnesses, weigh evidence, and draw factual inferences. (*People v. James* (1977) 19 Cal.3d 99, 107.) On an appeal of a denial of a motion to suppress, we defer to the trial court's factual findings supported by

substantial evidence, but independently determine whether, on those facts, the search or seizure was reasonable under the Fourth Amendment. (*People v. Weaver* (2001) 26 Cal.4th 876, 924; *People v. Glaser* (1995) 11 Cal.4th 354, 362.)

Here, the trial court found that J.C.'s verbal answer of "yeah" to officer Parker's question was ambiguous and not a clear objection to a search because both the question and answer occurred in a normal tone of voice. The court further found that J.C.'s movement immediately thereafter indicated consent to a search and that the verbal response coupled with the ensuing movement constituted voluntary consent. Substantial evidence supports the trial court's findings, and we conclude that, based on these findings, the search was conducted with voluntary consent.

Both officer Parker and J.C. testified that Parker asked whether J.C. "minded" being searched, J.C. answered "yeah," and turned around and took his hands out of his pockets. Parker testified that J.C. raised his arms outwards from his body and J.C. testified that he moved his arms behind him. Both Parker and J.C. testified that J.C. was calm and cooperative and that Parker spoke in a normal tone, made no threats, and did not have his weapon drawn. To the extent the testimony regarding J.C.'s arm movements after he turned around conflicted, the trial court reasonably concluded that the arm movement indicated consent to the ensuing search.

J.C. argues that a "yes" or "yeah" response when asked, "may I search" you is consent to a search, but the same answer when asked, "do you mind if I search" means "yes I do mind," and constitutes an objection to the search. We agree that, due to the form of the question, J.C.'s verbal response was technically negative in modern usage. Nevertheless, the response can be interpreted reasonably as ambiguous because "yes" is normally an affirmative response. Moreover, J.C.'s verbal response was only part of his total response. As he was giving the verbal response, J.C. turned around and raised his arms to allow the police officer to conduct a search. This movement, as the trial court concluded, permitted the police officer to construe the word "yeah" as ambiguous or as consistent with consent which was then unequivocally demonstrated by the subsequent movement.

In *U.S. v. Drayton* (2002) 536 U.S. 194, the court found valid consent under similar facts, including a technically negative response to a request to search combined with cooperative conduct. There, the officer asked the codefendant, Brown, "Do you mind if I check your person?" Brown answered, "'Sure,' and cooperated by leaning up in his seat, pulling a cell phone out of his pocket, and opening up his jacket." (*Id.* at p. 199.) The Supreme Court stated that the totality of the circumstances showed consent and that the consent was voluntary. (*Id.* at p. 207.) *Drayton* and similar cases establish that when an officer requests permission to search, a defendant validly consents when the fair meaning of his or her words *in their context* is acquiescence to the officer's request. (See also *People v. Cruz* (1968) 264 Cal.App.2d 437, 442; *U.S. v. Wilson* (4th Cir. 1990) 895 F.2d 168, 170.)

The judgment is affirmed.

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PERREN, J.

We concur:

GILBERT, P.J.

YEGAN, J.

James E. Herman, Judge  
Superior Court County of Santa Barbara

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